

IMPLEMENTING ARRANGEMENT
BETWEEN
THE NUCLEAR REGULATORY COMMISSION
OF THE UNITED STATES OF AMERICA
AND
THE AGENCY OF NATURAL RESOURCES AND ENERGY
OF JAPAN
FOR COOPERATION IN THE FIELD OF NUCLEAR REGULATORY MATTERS AND
NUCLEAR SAFETY RESEARCH AND DEVELOPMENT

The Nuclear Regulatory Commission of the United States of America (hereinafter referred to as "the U.S.N.R.C.") on the one hand, and the Agency of Natural Resources and Energy of Japan (hereinafter referred to as "the A.N.R.E.") on the other hand (hereinafter jointly referred to as "the Parties");

Having a mutual interest in a continuing exchange of information pertaining to regulatory matters and nuclear safety research and development with the objective of improving the safety of nuclear facilities;

Having cooperated for the exchange of technical information in the field of nuclear regulatory matters and nuclear safety research between the U.S.N.R.C. and the A.N.R.E. since May 30, 1974;

Recognizing the "Agreement for Cooperation between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy" which entered into force on July 17, 1988 (hereinafter referred to as "the Agreement"); and the Exchange of Notes between the Government of the United States of America and the Government of Japan for Cooperation in the Field of Nuclear Regulation Matters and Nuclear Safety Research and Development under the Agreement, dated October 15, 1997 (hereinafter referred to as "the Exchange of Notes");

Have agreed as follows pursuant to the provisions of paragraph 1 (a) of ARTICLE 2 of the Agreement and paragraph 3 of the Exchange of Notes:

ARTICLE I SCOPE OF THIS IMPLEMENTING ARRANGEMENT

A. Information Exchange

To the extent that the U.S.N.R.C. and the A.N.R.E. are permitted to do so under the laws, regulations, and policy directives of their respective countries, the Parties will exchange the following types of information relating to the regulation of safety, safeguards, physical protection, waste management, and environmental impact of designated nuclear energy facilities and to nuclear safety research programs on an equal and reciprocal basis:

1. Topical reports concerning technical safety, safeguards, physical protection, waste management, and environmental effects written by or for one of the Parties as a basis for, or in support of, regulatory decisions and policies.
2. Documents relating to significant licensing actions and safety, safeguards, physical protection, waste management, and environmental decisions affecting nuclear facilities.
3. Detailed documents describing the A.N.R.E. process for licensing and regulating certain Japanese facilities designated by the U.S.N.R.C. as similar to certain facilities being built or planned in the U.S. and equivalent documents on such U.S. facilities.
4. Information in the field of nuclear safety research and development which one of the Parties has the right to disclose, either in the possession of one of the Parties or available to it, including light water reactor safety information (in particular, information on aging, containment performance and integrity and nuclear waste disposal) and other safety related information as agreed to between the Parties. Each Party will transmit to the other urgent

information concerning research results that requires early attention in the interest of public safety, along with an indication of significant implications.

5. Reports on operating experience, such as reports on nuclear incidents, accidents, and shutdowns, and compilations of historical reliability data on components and systems.
6. Regulatory procedures for the safety, safeguards, physical protection, waste management, and environmental impact evaluation of nuclear facilities.
7. Early advice of important events, such as serious operating incidents and Government-directed reactor shutdowns, which are of immediate interest to the Parties. (It is confirmed that the exchange of the above mentioned types of information shall not be construed to prejudice the rights and obligations of Japan and the United States of America under the Convention on Early Notification of a Nuclear Accident to which the two States are parties.)
8. Copies of regulatory standards required to be used, or proposed for use, by the regulatory organizations of one of the Parties.

B. Cooperation in Nuclear Safety Research and Development

1. This Implementing Arrangement will facilitate the joint cooperation between the Parties in the areas of nuclear safety research and development conducted by the Parties to confirm and improve the safety of nuclear facilities and nuclear waste disposal and to support the regulatory process.
2. The execution of joint programs and projects of nuclear safety research and development, or those programs and projects under

which activities are divided between the Parties, including the use of test facilities and/or computer programs owned by either Party, will be considered on a case-by-case basis and may be the subject of agreements or exchanges of letters between the Parties or their designees as defined in Paragraph I.C., subject to the terms and conditions of this Implementing Arrangement.

3. The joint programs and projects in nuclear safety research and development may include the following forms:
 - a. Temporary assignments of personnel by one Party or its designees to the other Party or its designees, or other facility that the other Party owns or in which it sponsors research. These will be considered on a case-by-case basis and may be the subject of an agreement between the Parties or their designees, or between one Party and the designee of the other Party.
 - b. In addition, the use by one Party or its designees of facilities which are owned by the other Party or its designees, or in which research is being sponsored by the other Party or its designees will also be considered on a case-by-case basis. Such use of facilities may be the subject of agreements between the Parties or their designees, or between one Party and the designee. The use of facilities owned by the designee of the Parties may be subject to commercial terms and conditions, as determined to be necessary by the Parties.
 - c. If either Party wishes to visit, assign personnel or use the facilities owned or operated by entities other than the Parties to this Implementing Arrangement, the Parties recognize that the approval of such entities will, in general, be required in respect to the terms upon which such visit, assignment or use will be made.

C. Designees

Subject to the approval of the other Party, each Party may designate non-governmental institutes or organizations (hereinafter referred to as "the designees") which assist in the implementation of cooperation under this Implementing Arrangement, provided that each Party ensures by contract with its own designees or otherwise that its own designees are under its control with respect to the implementation of cooperation under this Implementing Arrangement.

ARTICLE II ADMINISTRATION

- A. Administrators will be designated by each side to coordinate cooperation under this Implementing Arrangement. The administrators will be the recipients of the documents transmitted under this Implementing Arrangement, including copies of letters unless otherwise agreed. Within the terms of this Implementing Arrangement, the administrators will be responsible for developing the cooperation under this Implementing Arrangement, including agreement on the designation of the nuclear energy facilities subject to the exchange of information, on specific documents and information to be exchanged, and on the programs and projects of nuclear safety research and development.
- B. The exchange of information under this Implementing Arrangement will be accomplished through correspondence, technical reports, experimental data, newsletters and other documents, by visits and meetings of joint experts which will be arranged in advance, and by such other means as the Parties agree. A meeting will be held at such times as the Parties agree to review the exchange of information, to recommend revisions to the provisions of this Implementing Arrangement to improve and develop the cooperation, and to discuss topics within the scope of this Implementing Arrangement. The time, place and agenda for such meetings will be agreed upon in advance. Visits which take place under this Implementing

Arrangement, including their schedules, will be subject to the prior approval of the administrators unless otherwise agreed.

- C. The administrators will determine the number of copies to be provided of the documents exchanged. Each document will be accompanied by an abstract in English, 250 words or less, describing its scope and content.
- D. The application or use of any information exchanged or transmitted between the Parties under this Implementing Arrangement will be under the responsibility of the receiving Party, and the transmitting Party may not warrant the suitability of such information for any particular use or application.
- E. Recognizing that some information of the type covered in this Implementing Arrangement is not available within the Parties, but is available from other agencies of the Governments of the Parties, each Party will assist the other to the maximum extent possible by organizing visits and directing inquiries concerning such information to appropriate agencies of the Government concerned. The foregoing will not constitute a commitment of the other agencies to furnish such information or to receive such visitors.
- F. Nothing contained in this Implementing Arrangement will require either Party to take any action which would be inconsistent with its laws, regulations and policy directives.

ARTICLE III EXCHANGE AND USE OF INFORMATION

A. General

Scientific and technological information of a nonproprietary nature arising from this Implementing Arrangement except for other confidential

or privileged information may be made available to the public by either Party through customary channels and in accordance with normal procedures of the Parties.

B. Protection and Distribution of Intellectual Property Rights and Other Rights of a Proprietary Nature

1. It is confirmed that protection and distribution of intellectual property rights and other rights of a proprietary nature created or introduced in the course of the cooperative activities under this Implementing Arrangement shall be governed by the provisions set forth in the Annex, except as otherwise specifically agreed by the Parties or the designees.
2. The Parties understand that the Parties and the designees may upon mutual agreement adopt intellectual property provisions for the cooperative activities arrangements that are different from the provisions of the Annex.

C. Documentary Business-Confidential Information

1. Marking Procedures for Documentary Business-Confidential Information

A Party receiving documentary business-confidential information as provided in the Annex pursuant to this Implementing Arrangement will respect the privileged nature thereof, provided such business-confidential information is clearly identified with the following (or substantially similar) legend:

"This document contains business-confidential information furnished under the Implementing Arrangement signed on October 23, 1997, between the Nuclear Regulatory Commission of the United States of America and the Agency of Natural Resources and Energy of Japan and shall not be disseminated outside these organizations, their consultants, prime and

subcontractors, and licensees, and concerned departments and agencies of the Government of the United States and the Government of Japan without the prior approval of (name of transmitting Party). This notice will be marked on any reproduction hereof, in whole or in part. These limitations will automatically terminate when this information is disclosed by the owner without restriction."

This restrictive legend will be respected by the receiving Party and business-confidential information bearing this legend will not be used for commercial purposes, made public, or disseminated in any manner unspecified by or contrary to the terms of this Implementing Arrangement without the consent of the transmitting Party.

2. Dissemination of Documentary Business-Confidential Information

a. In general, business-confidential information received under this Implementing Arrangement may be freely disseminated by the receiving Party without prior consent to persons within or employed by the receiving Party, and to concerned Government departments and agencies in the country of the receiving Party.

b. In addition, business-confidential information may be disseminated without prior consent

(i) to prime or subcontractors or consultants of the receiving Party located within the geographical limits of that Party's nation, for use only within the scope of work of their contracts with the receiving Party in work relating to the subject matter of the business-confidential information;

(ii) to domestic organizations permitted or licensed by the receiving Party to construct or operate nuclear production or utilization facilities, or to use nuclear materials and radiation sources, provided that such business-confidential information is used

only within the terms of the permit or license; and

(iii) to domestic contractors of organizations identified in C.2.b. (ii), above, for use only in work within the scope of the permit or license granted to such organizations,

Provided that any dissemination of business-confidential information under C.2.b. (i), (ii), and (iii), above, will be on an as-needed, case-by-case basis, will be pursuant to an agreement of confidentiality, and will be marked with a restrictive legend substantially similar to that appearing in C.1. above.

c. With the prior written consent of the Party furnishing business-confidential information under this Implementing Arrangement, the receiving Party may disseminate such business-confidential information more widely than otherwise permitted in Subsections C.2.a. and b. The Parties will cooperate in developing procedures for requesting and obtaining approval for such wider dissemination, and each Party will grant such approval to the extent permitted by its national policies, regulations, and laws.

D. Other Confidential or Privileged Information

1. Definition

The term "other confidential or privileged information" means information, other than "business-confidential information", which is protected from public disclosure under the national policies, regulations, and laws of the country of the Party providing the information and which has been transmitted and received in confidence.

2. Marking Procedures for Other Confidential or Privileged Information of a Documentary Nature

A Party receiving under this Implementing Arrangement other confidential or privileged information will respect its confidential nature, provided such information is clearly marked so as to indicate its confidential or privileged nature and is accompanied by a statement indicating

- a. that the information is protected from public disclosure by the Government of the transmitting Party; and
- b. that the information is transmitted under the condition that it be maintained in confidence.

3. Dissemination of Other Confidential or Privileged Information of a Documentary Nature

Other confidential or privileged information may be disseminated in the same manner as that set forth in paragraph C.2., Dissemination of Documentary Business-Confidential Information.

E. Non-Documentary Business-Confidential or Other Confidential or Privileged Information

Non-documentary business-confidential or other confidential or privileged information provided in seminars and other meetings arranged under this Implementing Arrangement will be treated by the Parties according to the principles specified for documentary information in this Implementing Arrangement; provided, however, that the Party communicating such proprietary or other confidential or privileged information has placed the recipient on notice as to the character of the information communicated.

F. Consultation

If, for any reason, one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the nondissemination provisions of this Implementing Arrangement, it will immediately inform the other Party. The Parties will thereafter consult to take an appropriate course of action.

G. Other

Nothing contained in this Implementing Arrangement will preclude a Party from using or disseminating information received without restriction by a Party from sources outside of this Implementing Arrangement.

ARTICLE IV COSTS

Except when otherwise specifically agreed upon by the Parties, all costs arising in the implementation of this Implementing Arrangement will be borne by the Party that incurs them. The ability of the Parties to carry out their obligations is subject to the appropriation of funds and to applicable laws and regulations in each country.

ARTICLE V DISPUTE RESOLUTION

Cooperation under this Implementing Arrangement will be undertaken subject to the Agreement, the Exchange of Notes and the laws and regulations of the respective countries. Any dispute or questions between the Parties concerning the interpretation or application of this Implementing Arrangement arising during its term will be settled by mutual agreement of the Parties.

ARTICLE VI FINAL PROVISIONS

- A. This Implementing Arrangement will enter into force upon the last date of signature and will remain in force for a period of five years provided that the Agreement and the Exchange of Notes remain in force. It may be extended for a further period of time by written agreement of the Parties, provided that the Agreement and the Exchange of Notes remain in force.
- B. A Party may terminate this Implementing Arrangement after providing the other Party written notice 180 days prior to its intended date of termination.
- C. All information protected by provisions of this Implementing Arrangement as business-confidential or other confidential or privileged information will remain so protected for the duration of this Implementing Arrangement and after this Implementing Arrangement is expired or terminated, unless otherwise agreed by the Parties in writing.

DONE at Tokyo in two originals, in the English and Japanese languages, each text being equally authentic.

FOR THE NUCLEAR REGULATORY COMMISSION
OF THE UNITED STATES OF AMERICA

FOR THE AGENCY OF NATURAL
RESOURCES AND ENERGY,
MINISTRY OF INTERNATIONAL
TRADE AND INDUSTRY OF JAPAN

Signature: Shirley Ann Jackson

Name: Shirley Ann Jackson

Title: Chairman

Date: October 23, 1997

Signature: T. Taniguchi

Name: Tomihiko Taniguchi

Title: Deputy Director-General

Date: October 23, 1997

CERTIFIED A TRUE COPY
BY Emile L. Julian
Office of the Secretary

ANNEX

PROTECTION AND DISTRIBUTION OF INTELLECTUAL PROPERTY RIGHTS AND OTHER RIGHTS OF A PROPRIETARY NATURE

1. Business-Confidential Information

- A. For the purpose of this Annex, "business-confidential information" means any know-how, technical data, or technical, commercial, or financial information that meets all of the following conditions:
- (i) It is of a type customarily held in confidence for commercial reasons;
 - (ii) It is not generally known or publicly available from other sources;
 - (iii) It has not been previously made available by the owner to others without an obligation concerning its confidentiality; and
 - (iv) It is not already in the possession of the recipient without an obligation concerning its confidentiality.
- B. Any business-confidential information will be furnished or, when created in the course of the cooperation under this Implementing Arrangement, transferred only by mutual written agreement of the Parties and will be given full protection in accordance with the laws and regulations of their respective countries.
- C. Any business-confidential information will be appropriately identified before it is furnished in the course of the cooperation under this Implementing Arrangement or, unless otherwise provided in the mutual written agreement of the Parties, immediately upon being created. Responsibility for identifying such information will fall on the Party which furnishes it or asserts that it is to be protected. Unidentified information will be assumed not to be information to be protected, except that a Party may notify the other Party in writing, within a reasonable period of time after furnishing or transferring

such information, that such information is business-confidential information under the laws and regulations of its country. Such information will thereafter be protected in accordance with subparagraph B above.

2. Ownership of Intellectual Property Rights

It is confirmed that between each Government and nationals of its country the ownership of intellectual property rights will be determined in accordance with its national laws, regulations and practices.

3. Inventions

- A. For the purpose of this Annex, the "Invention" means any invention made in the course of the cooperation under this Implementing Arrangement which is or may be patentable or otherwise protectable under the laws of Japan, the United States of America or any third country.
- B. As to an Invention, the Parties will take appropriate steps, in accordance with the national laws and regulations of the respective countries, with a view to realizing the following:
 - (i) If an Invention is made as a result of cooperation under this Implementing Arrangement that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars, or the exchange of technical reports or papers, unless otherwise provided in an applicable mutual written agreement of the Parties:
 - (a) the Party whose personnel make the Invention (hereinafter referred to as "the Inventing Party") or the personnel who make the Invention (hereinafter referred to as "the Inventor") have the right to obtain all rights and interests in the Invention in all countries, and

- (b) in any country where the Inventing Party or the Inventor decides not to obtain such rights and interests, the other Party has the right to do so.
- (ii) If the Invention is made by an Inventor of a Party ("the Assigning Party") while assigned to another Party ("the Receiving Party") in the course of programs of cooperation that involve only the visit or exchange of scientists and engineers, and:
 - (a) in the case where the Receiving Party is expected to make a major and substantial contribution to the programs of the cooperation:
 - i. the Receiving Party has the right to obtain all rights and interests in the Invention in all countries, and
 - ii. in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so;
 - (b) in the case where the provision in subparagraph (a) above is not satisfied:
 - i. the Receiving Party has the right to obtain all rights and interests in the Invention in its own country and in third countries,
 - ii. the Assigning Party or the Inventor has the right to obtain all rights and interests in the Invention in its own country, and
 - iii. in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so.
- (iii) Specific arrangements for joint research projects with an agreed research work scope and other forms of the cooperation within the scope of this Implementing Arrangement will provide for the mutually agreed upon disposition, on an equitable basis, of rights to the Invention made as a result of such cooperation.
- (iv) The Inventing Party will disclose promptly the Invention to the other Party and furnish any documentation or information necessary to enable the other Party to establish rights to which it may be

entitled. The Inventing Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights or the rights of the Inventor related to the Invention. Unless otherwise agreed in writing, such restrictions will not exceed a period of six months from the date of communication of such documentation or information.

4. Copyrights

Disposition of rights to copyright-protected works created in the course of the cooperation under this Implementing Arrangement will be determined in the relevant mutual written agreement of the Parties. The Parties will take appropriate steps to secure copyrights to works created in the course of the cooperation under this Implementing Arrangement in accordance with the national laws and regulations of the respective countries.

5. Rights to Semiconductor Chip Layout Designs

Disposition of rights to semiconductor chip layout designs created in the course of the cooperation under this Implementing Arrangement will be determined in the relevant mutual written agreement of the Parties. The Parties will take appropriate steps to secure rights to semiconductor chip layout designs created in the course of the cooperation under this Implementing Arrangement in accordance with the national laws and regulations of the respective countries.

6. Other Forms of Intellectual Property

For those other forms of intellectual property created in the course of the cooperation under this Implementing Arrangement which are protected under

the laws of either country, disposition of rights will be determined on an equitable basis, in accordance with the laws and regulations of the respective countries.

7. Cooperation

Each Party will take all necessary and appropriate steps, in accordance with the laws and regulations of its country, to provide for the cooperation of its authors and inventors which are required to carry out the provisions of this Annex. Each Party assumes the sole responsibility for any award or compensation that may be due its personnel in accordance with the laws and regulations of its country, provided, however, that this Annex creates no entitlement to any such award or compensation.